

**CONFIDENTIAL INFORMATION**

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The Government Code and most of the business tax laws contain provisions making it illegal to divulge to any unauthorized persons information regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. (This includes information contained in Forms BOE-1164 and BOE-1032; see section 0401.20). Information of this nature contained in Board records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the Board. Requests for information of a confidential nature should be referred to a supervisor.

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, and tax area. However, disclosure of the name and address of an individual may be prohibited by Civil Code Section 1798.69. (Civil Code Section 1798.69 provides in part that the Board may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code.) You should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

Requests by a taxpayer's representative for information and records under the Information Practices Act and the California Public Records Act will be guided by the following policy:

- A taxpayer's representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination, or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized by a notary public.

**Exceptions to the written authorization rule:**

~~(Exceptions to the written authorization rule are made in the case of attorneys and certified public accountants who request the information in writing and/or who are known to represent the taxpayer.)~~

1. ~~•~~ Taxpayer directed - Written authorization is not required when supplying copies of working papers ~~on~~ of an audit to the taxpayer's bookkeeper or accountant when the taxpayer directed the Board to contact his/her bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
2. Oral inquiries - Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by the Board to represent the taxpayer. Most oral requests are for an informal review of work papers before the audit is transmitted to Headquarters – generally a time when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may have become aware of the general subject matter and a taxpayer's business name or account number, but have not actually been asked by the taxpayer to



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represent them. Staff should check the taxpayer's file and the appropriate IRIS screens to verify that the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments regarding who maintained the records and who was involved in the discussion of audit findings.)

Preferably, a stream of correspondence exists for the current case which clearly establishes the attorney's or CPA's relationship with the taxpayer. If the only information available on IRIS involves a prior case, or the representative has just been recently added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.

**Requests for copies of district, appeals, and central files must be obtained in writing.**

3. Written inquiries - Attorneys and CPAs may examine and/or receive copies of information without having written authorization from the taxpayer if they request the information in writing and clearly indicate that he or she is authorized to represent the taxpayer. In situations where copy requests are made for file information, the supervisor should be provided with a printout of the appropriate IRIS screen indicating the representative's name before the response is approved and mailed. As explained in (2) above, staff should still review IRIS and the taxpayer's file to screen for speculative inquiries. If staff still has doubts, staff should contact the taxpayer to confirm authorization.
- Notarization of written authorizations is not a requirement.



**SECTION 6596 GUIDELINES FOR TAXPAYER CORRESPONDENCE**

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The Board is empowered to relieve taxpayers of tax, interest, or penalty where the Board finds that the failure to make a timely return or prepayment was due to the taxpayer's reasonable reliance on written advice from the Board. See Regulation 1705 for further information. The following constitutes written advice by the Board:

- **ADVICE PROVIDED IN A WRITTEN COMMUNICATION.** Written advice by the Board to a taxpayer in response to a taxpayer's specific written inquiry or from his or her representative seeking relief from liability will constitute written advice that can be relied on for Section 6596. To be considered a specific written inquiry, representatives must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer representatives where the name of the taxpayer is not divulged, the writer will ask that the representative divulge the name and permit number of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. The taxpayer's name and permit number will be referenced in the Board's response.

Tax advice to trade associations, taxpayer representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement:

*The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under Section 6596.*

If individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again setting forth the specific facts. Staff is encouraged **not** to make presumptions. However, should it become necessary to do so, they should be clearly identified as such in the letter.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. Written advice that may serve for relief under Section 6596 must include the following statement:

*The opinion expressed in this letter may only be relied upon for relief under Section 6596 of the Sales and Use Tax Law by (state taxpayer's name). Any person seeking relief under this section will be required to furnish a copy of the original written inquiry to the Board and a copy of this written advice.*

- **WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of a taxpayer's books and records to an auditor for examination is considered a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence that demonstrates the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board." The facts and conditions in the current situation at hand must be the same as those during the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are



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sufficient for a finding of relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

Written advice from the Board that was received during a prior audit of a taxpayer under the above conditions may be relied upon by the taxpayer audited or by a legal or statutory successor to that person.

However, the BOE-79-F, Audit Transmittal Letter – Courtesy Letter to Taxpayer When Account is Waived, informing taxpayers that their account is being waived for audit will not qualify as written advice to relieve the taxpayer from tax, penalty, and interest under section 6596 .

A record of the number of letters received and responded to will be maintained by District Administrators and Headquarters' Supervisors. A monthly report along with copies of all letters confirming transactions of an exempt nature, modification/recision letters, and the taxpayer's original inquiry letter will be forwarded to the Public Information and Administration Section for final review of the letters' accuracy. Any correspondence requiring adjustment will be returned to the originating party. Correspondence not providing exemption advice, which would otherwise entitle a taxpayer to relief under Section 6596, should not be forwarded to the Public Information and Administration Section.

When an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given was incomplete or incorrect, appropriate modification or recision letters should be sent to the taxpayer. Written advice may also be invalidated by a change in statute or constitutional law, a change in the Sales and Use Tax Regulations, or a final decision of a court, rendering the Board's earlier written advice invalid.



**DESTRUCTION OF FILE MATERIAL**

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CPPM section 910.000 provides guidelines for the destruction of district account folder information. As explained in that section, audit staff will be responsible for determining if audit reports and audit working papers (AWPs) should be destroyed.

**Purging Guidelines**

The most recent audit report and AWPs for active accounts will be retained regardless of age. Audit reports and AWPs for periods prior to the most recent audit or for closed out accounts, may be purged provided there is no tax liability owing from the audit, pending litigation, petition for redetermination, claim for refund, pending request for 6596 relief, or other similar matter. The district must also decide that retention is not necessary to support the use of a prior audit percentage of error. Audit Manual 0405.33 explains the use of prior audit percentages of error in current audits.

When an audit report and AWPs are designated for purging, a copy of the audit report may be retained when determined necessary to provide district staff with a record of past audit results or for use as an aid in audit selection. Each district will determine which audit reports to retain and how long retention is necessary. Review of non-audit material for purging will be performed by the compliance staff (CPPM 910.20 and 910.30).

**Inquiry and Transmittal Letter to Taxpayer**

When it is determined that an audit report and AWPs should be purged from the file, the documents should be returned to the taxpayer. However, prior to mailing any documents, staff must first contact the taxpayer by means of an inquiry letter in order to confirm, in writing, that the taxpayer wishes to receive the audit report and AWPs. The inquiry letter should indicate the period of the audit report and AWPs and include an area that can be used by the taxpayer to indicate if they are or are not interested in receiving the referenced documents.

In addition, the inquiry letter will advise the taxpayer that if they do not respond within 30 days of the letter date the Board will assume they are not interested in receiving the documents and the documents will be removed from their file and destroyed. If written notification is not received within the 30 day period, no further follow-up with the taxpayer is required. A copy of the inquiry letter must be placed in the taxpayer's file documenting the attempt to return the audit report and AWPs. Audit reports and AWPs will not be mailed unless the Board receives written notification from the taxpayer that they are interested in receiving the documents.

To prevent the possible disclosure of confidential information for closed-out accounts, the audit report and AWPs will not be mailed to the taxpayer's last address of record unless the proper mailing address can be confirmed from the inquiry letter, or by some other method, and the taxpayer requests the documents be sent. If the taxpayer cannot be contacted to confirm a current mailing address or does not return the inquiry letter, the audit report and AWPs designated for purging shall be destroyed. A copy of the inquiry letter shall be placed in the taxpayer's file for documenting the attempt to return the audit report and AWPs. Comments should also be entered in the IRIS TAR AI screen stating the period of the audit and AWPs and that the inquiry letter was sent to the last known address of the taxpayer.

A transmittal letter must be used to return the audit report and AWPs. The transmittal letter should indicate the enclosed audit report and AWPs are being



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returned based on the Board's determination that retention of the documents is no longer necessary. A copy of the transmittal letter and the written notification from the taxpayer (usually the returned inquiry letter) must be placed in the taxpayer's file to document the return of the audit report and AWP. Comments should also be entered in the IRIS AUD MC screen stating the period of the audit report and AWP and that the transmittal and inquiry letters were sent.

The AWP includes all of the schedules and documentation containing the facts, information and computations upon which any additional liability, refund, or no change to reported liability is based. This includes the BOE-495, Index to Audit Working Papers, and all the schedules which follow, including general audit comments and memo schedules. However, information which is not releaseable under the Information Practices Act or Public Records Act should be deleted from the AWP provided to the taxpayer. For example, forms BOE-1164 and BOE-1032 contain confidential information about other taxpayers that may not be released (see section 0401.20). Any questions concerning the release of specific documents which may be viewed as confidential should be directed to the Disclosure Officer within the Board's Internal Security and Audit Division.

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